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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/376,794	08/18/1999	RAINER KROPKE	BEIERSDORF-5	6931

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EXAMINER
KISHORE, GOLLAMUDI S

ART UNIT	PAPER NUMBER
1615	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/376,794	Applicant(s) Kropke
	Examiner Gollamudi Kishore	Art Unit 1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *three* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Feb. 15, 2002* .

2a) ☒ This action is **FINAL.** 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *4-7 and 12-17* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *4-7 and 12-17* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
18) ☐ Interview Summary (PTO-413) Paper No(s). _____
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other:

DETAILED ACTION

The amendment dated 2-15-02 and the change of address dated 4-3-02 are acknowledged.

Claims included in the prosecution are 4-7 and 12-17.

Claim Rejections - 35 U.S.C. § 102

1. **The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:**

> **A person shall be entitled to a patent unless --**
>
> **(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

2. **Claims 4-7 and 12-17 are rejected under 35 U.S.C. 102(b) as being anticipated FR 2667 072.**

FR disclose compositions containing chitosan and phospholipid (note the abstract, Examples on page 11).

Applicant's arguments have been fully considered, but are not found to be persuasive. Applicant argues that instant claims expressly require that the chitosan have the molecular weight of 10,000 to 2,000,000. This argument is not found to be persuasive

since as recognized by applicant himself, FR teaches the molecular weight of over 5,000 and hence the reference meets the requirements of instant claims.

Claim Rejections - 35 U.S.C. § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> **(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.**

4. Claims 4-7 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 771 566 or Magdassi or FR 2667 072 cited above.

EP, Magdassi and FR disclose emulsion compositions containing chitosan and phospholipid (note the abstract, Tables and claims of EP; columns 5 and 8 and claims of Magdassi; note Examples on page 11 and the English translation of FR).

EP does not explicitly state the molecular weight and the degree of deacylation. Assuming they are different, the reference clearly teaches that these polysaccharides stabilize the emulsions and that chitosans with different molecular weights and degree Of deacylation are readily available in the market (page 2). EP also does not specifically teach that the phospholipids in the composition reduces the tackiness of the composition. However, as pointed out above, since the compositions are same it would have been obvious

to one of ordinary skill in the art that properties including the non-tackiness would be the same.

Similarly Magdassi does not specifically teach the molecular weight and the degree of deacylation. As pointed out above, it is deemed obvious to one of ordinary skill in the art to use a specific chitosan in the teachings of Magdassi with the expectation of obtaining similar results. An artisan would be motivated to use any chitosan since EP shows that these are readily available in the market. Magdassi does not specifically teach that the phospholipids in the composition reduces the tackiness of the composition. However, as pointed out above, since the compositions are same it would have been obvious to one of ordinary skill in the art that properties including the non-tackiness would be the same.

FR does not specifically teach that the phospholipids reduce the tackiness of the composition. However, as pointed out above, since the compositions are same it would have been obvious to one of ordinary skill in the art that properties including the non-tackiness would be the same.

Applicant's arguments have been fully considered, but are not found to be persuasive. Applicant argues that there is nothing in the references to show that the addition of phospholipids to reduce the tackiness and make them non-tacky. This argument is not found to be persuasive since as already pointed out before, there is no specific definition of this term in the specification and applicant himself has not shown that the

tackiness is reduced. The dictionary meaning of tackiness is 'sticky' and applicant has not shown that the prior art compositions are sticky.

5. Claims 4-7 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 771 566 or Magdassi or FR 2667 072 cited above, further in view of either JP 63211208 or JP 03074316.

The teachings of EP, Magdassi and FR which teach emulsions containing the phospholipids and chitosan have been discussed above. It would have been obvious to one of ordinary skill in the art that the compositions of EP, Magdassi and FR are non-tacky since both JP references teach that the phospholipid containing cosmetic compositions are non-sticky (note the abstracts).

Applicant's arguments have been fully considered, but are not found to be persuasive. Applicant argues that there is no indication in JP references that phospholipids reduce tackiness. This argument is not found to be persuasive since JP references state that the compositions are non-tacky and if the phospholipids have not contributed to the reduction of the tackiness, the prior art compositions would have been tacky. Furthermore, as pointed out above, there is no specific definition of this term in the specification and applicant himself has not shown that the tackiness is reduced.

The reference of Nikoloff (4,766,105) which teaches that phospholipids alleviate sticking is cited of interest.

6. **Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).**

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *G.S. Kishore* whose telephone number is (703) 308-2440.

The examiner can normally be reached on Monday-Thursday from 6:30 A.M. to 4:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, T.K. Page, can be reached on (703)308-2927. The fax phone number for this Group is (703)305-3592.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [thurman.page@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1235.

Gollamudi S. Kishore, Ph. D

Primary Examiner

Group 1600

gsk

May 2, 2002